

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

CLIFFORD ACUNA,

Plaintiff,

v.

Civil No.

CORIZON HEALTH, INC.,

Defendant.

**NOTICE OF FILING OF REMOVAL**

COMES NOW, Corizon LLC, improperly named as Corizon Health, Inc. (hereinafter "Corizon"), by and through its undersigned counsel, Simone, Roberts & Weiss, P.A. (Norman F. Weiss) pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby gives notice of removal of this action from the First Judicial District, County of Santa Fe, State of New Mexico, Cause No.: D101-cv-2015-00002, to the United States District Court for the District of New Mexico, and states as follows:

**I. INTRODUCTION**

1. On or about December 31, 2014, Plaintiff, Clifford Acuna, (hereinafter "Plaintiff"), commenced this action by filing his Complaint for Malpractice (hereinafter "Complaint") in the First Judicial District, County of Santa Fe, State of New Mexico, D-101-CV-2015-00002 (hereinafter "State court action").

2. A copy of all pleadings filed in the State court action, are attached hereto as Exhibit A. The Complaint appears at Exhibit A, page 1.

3. Defendant, Corizon, acknowledges having been served with process on May 11, 2015. See Exhibit B.

4. This action arises out of Plaintiff's claim that Defendant negligently provided medical care for this ruptured Achilles tendon, in that Defendant failed to properly diagnose, treat, advise, care, timely order x-rays, and timely refer Plaintiff for orthopedic care. See Complaint, ¶¶ 4 and 5, Exhibit A, page 1.

5. The sole cause of action against Corizon is for negligent medical care, medical malpractice.

6. The amount in controversy in this case exceeds \$75,000.

## **II. DIVERSITY JURISDICTION**

7. In his Complaint, Plaintiff asserts claims over which this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because: (a) the parties are citizens of different states; and (b) the Defendant is not a citizen of the State of New Mexico, and (c) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

### **A. Complete Diversity of Citizenship Exists.**

8. As alleged in the Complaint, Plaintiff is a resident of the County of Santa Fe, State of New Mexico (see Complaint, ¶ 1, Exhibit A, page 1).

9. Corizon Health, Inc. is a Delaware Corporation with its principal place of business within the state of Tennessee and Missouri, and Corizon, LLC is a Missouri limited liability company with its principal places of business in Tennessee and Missouri. See 28 U.S.C. § 1332(c)(1).

10. For purposes of federal diversity jurisdiction, the parties are completely diverse.

**B. The Amount in Controversy Exceeds \$75,000.**

11. Plaintiff alleges that he has sustained past and future pain and suffering, past and future medical bills, loss of enjoyment of various aspects of his life, loss of earning capacity and permanent impairment, as a result of the Defendant's alleged medical malpractice relating to the treatment of his torn Achilles tendon. See ¶ 6 of Plaintiff's Complaint, Exhibit A, pages 1-2.

12. Upon information and belief, Plaintiff seeks well in excess of \$75,000, in compensatory damages alone.

13. Where a complaint does not contain dispositive allegations of the amount in controversy, the jurisdictional amount is determined by the allegations in the underlying complaint. See, e.g., *Laughlin v. Kmart Corp.*, 50 P.3d. 871, 873 (10th Cir. 1995).

14. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 and, therefore, this action may be removed pursuant to 28 U.S.C. §§ 1441 and 1446.

**III. VENUE**

15. Venue is proper in the District of New Mexico because this District embraces the location where the state court action is pending.

**IV. COMPLIANCE WITH THE RULES**

16. All procedural requirements related to the removal of this action have been satisfied.

17. True and correct copies of “all process, pleadings, and orders” filed in the State court action, and those served upon Corizon are attached hereto as Exhibit A. See 28 U.S.C. § 1446(a); D.N.M.LR-Civ. 81.1(a).

18. Defendant Corizon is timely filing this Notice of Removal within thirty days after its receipt, through service or otherwise, of a copy of the initial pleading setting forth claims for relief. See 28 U.S.C. § 1446(b). See Exhibit B.

19. Corizon filed a Notice of Filing of Notice of Removal in the pending state court action in the First Judicial District, County of Santa Fe, State of New Mexico, Cause No.: D101-cv-2015-00002, which is attached hereto as Exhibit C. See 28 U.S.C. § 1446(a).

20. A copy of this Notice of Removal will be promptly served upon the Plaintiffs, through their counsel. See 28 U.S.C. § 1446(d).

21. Pursuant to Fed.R.Civ.P. 81(c), Defendant Corizon will present its defenses by pleading at the time prescribed therein, and specifically reserves its right to assert all defenses including those defenses under Fed.R.Civ.P. 12(b).

WHEREFORE, Defendant, Corizon, respectfully requests that the action now pending in the First Judicial District, County of Santa Fe, State of New Mexico, D-101-CV-2015-00002, be removed therefrom to this Court and that all further proceedings be had in this Court.

Respectfully submitted,

**SIMONE, ROBERTS & WEISS, PA**

*Electronically Filed*

/s/ Norman F. Weiss

Norman F. Weiss

11200 Lomas Blvd., NE, Suite 210

Albuquerque, NM 87112-5573

Telephone: 505-298-9400

*Attorneys for Defendant Corizon, LLC*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of June, 2015,  
I filed the foregoing Answer electronically through the  
Odyssey Electronic Filing System, which caused  
all parties of record to be served by electronic means,  
as more fully reflected on the Notice of Electronic Filing.

Electronically Filed

/s/ Norman Weiss

Norman F. Weiss